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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,856	03/21/2002	Andrew Austen Mortlock	Z70598-1	6741

44992 7590 05/18/2006

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EXAMINER
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COLEMAN, BRENDA LIBBY

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/088,856

Applicant(s)

MORTLOCK ET AL.

Examiner

Brenda L. Coleman

Art Unit

1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,6,7,10,12,13,18,21,22,26,29,31,32 and 37 is/are pending in the application.  
4a) Of the above claim(s) 26 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,6,7,10,12,13,18,21,22,29,31,32 and 37 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1, 6, 7, 10, 12, 13, 18, 21, 22, 26, 29, 31, 32 and 37 are pending in the application.

This action is in response to applicants' amendment filed February 21, 2006. Claims 1, 6, 10, 12, 21, 29 and 37 have been amended and claims 11, 23-25, 27 and 33-36 have been canceled.

### ***Change of Examiner***

Note the change of Examiner in the present application. The Art Unit number (1624) remains the same.

### ***Response to Amendment***

Applicant's amendments filed February 21, 2006 have been fully considered with the following effect:

1. The applicants' amendments and arguments are sufficient to overcome the 35 U.S.C. § 112, second paragraph rejections labeled paragraph 3 of the last office action, which are hereby **withdrawn**.
2. The applicants' amendments and arguments are sufficient to overcome the 35 U.S.C. § 112, first paragraph rejection labeled paragraph 4 of the last office action, which is hereby **withdrawn**.
3. The applicants' amendments and arguments are sufficient to overcome the 35 U.S.C. § 112, first paragraph rejection labeled paragraph 5 of the last office action, which is hereby **withdrawn**.

4. With regards to the 35 U.S.C. § 103, obviousness rejection of claims 1, 6, 7, 10, 12, 13, 18, 21, 27, 29, 31, 33, 36 and 37 in the previous office action, the applicants' arguments have been considered but are not found persuasive. The applicants' stated, that the skilled person, starting from Myers et al., must first select pyrimidinyl from the list of 36 rings, ignoring all of the suggestions as to which rings are preferred. Myers teaches explicitly that the "preferred" embodiments of monocyclic aryl or heteroaryl includes pyrimidinyl for the substituent A. Myers defines A is a substituted or unsubstituted mono- or bi-cyclic aryl, heteroaryl, cycloalkyl or heterocycloalkyl ring system of about 5 to about 12 atoms. Myers then proceeds to define "more specifically" the preferred A monocyclic aryl or heteroaryl rings include substituted or unsubstituted phenyl, pyrrolyl, thienyl, furyl, thiazolyl, imidazolyl, pyrazolyl, pyridyl, pyrazinyl, pyrimidinyl, pyridazinyl, isothiazolyl, isoxazolyl and oxazolyl and thus pyrimidinyl is supported by Myers more specific definition of A. It is not to say that the specification itself must necessarily describe how to make and use every possible variant of the claimed invention, for the artisan's knowledge of the prior art and routine experimentation can often fill gaps, interpolated between embodiments, and perhaps even extrapolated beyond the disclosed embodiments, depending on the predictability of the art. See *Genentech, Inc. v. Nordisk A/S* 108 F.3<sup>rd</sup> 1361, 1366 [USPQ2d 1001] (Fed. Cir. 1997).

Claims 1, 6, 7, 10, 12, 13, 18, 21, 29, 31 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers et al., U.S. Patent No. 5,721,237, for reasons of record and stated above.

In view of the amendment dated February 21, 2006, the following new grounds of rejection apply:

***Election/Restrictions***

5. Claim 26 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claims 1, 6, 7, 10, 12, 13, 18, 21, 22, 29, 31, 32 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following reasons apply:

- a) Claim 1 and claims dependent thereon are vague and indefinite in that it is not known what is meant by the definition of  $R^5$ , where  $R^5$  is or a group.
- b) Claim 1 and claims dependent thereon are vague and indefinite in that it is not known what is meant by the definition of D, which appears four times in the claim and the first definition is different from all the rest.
- c) Claim 1 and claims dependent thereon are vague and indefinite in that it is not known what is meant by the second definition of  $R^{38}$ ,  $R^{39}$ ,  $R^{40}$ ,  $R^{41}$  and  $R^{42}$ , which is different from the first.

- d) Claim 6 recites the limitation "C<sub>1-4</sub>alkoxyC<sub>1-4</sub>alkyl" in the definition of R<sup>32</sup>. There is insufficient antecedent basis for this limitation in the claim.
- e) Claim 6 recites the limitation "-CONR<sup>34</sup>R<sup>35</sup> and -NR<sup>36</sup>COR<sup>37</sup>" in the definition of R<sup>33</sup>. There is insufficient antecedent basis for this limitation in the claim.
- f) Claim 7 is vague and indefinite in that it is not known what is meant by the definition of R<sup>4</sup> where R<sup>4</sup> is C<sub>1</sub> to something alkoxy. The faxed copy is not visible.
- g) Claim 29 is vague and indefinite in that it is not known what is meant by the claim dependency, which is any one of claims 1, 7, 12, 18 or 34 6.

### ***Claim Objections***

7. Claim 21 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must be stated in the alternative. See MPEP § 608.01(n).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 571-272-0665. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script that reads "Brenda Coleman". The signature is written in black ink and includes a long, sweeping horizontal stroke at the end.

Brenda L. Coleman  
Primary Examiner Art Unit 1624  
May 15, 2006